UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY PARTNERS, COUNTRY MUSIC. TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION, LLC, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-2203
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-3582

VIDEOTAPED DEPOSITION OF BRENT HURLEY
SAN FRANCISCO, CALIFORNIA
TUESDAY, AUGUST 26, 2008

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
CSR LICENSE NO. 9830
JOB NO. 15688

AUGUST 26, 2008

11:02 a.m.

VIDEOTAPED DEPOSITION OF BRENT HURLEY

SHEARMAN & STERLING, 525 Market Street, San Francisco, California, pursuant to notice, before ANDREA M. IGNACIO HOWARD, CLR, RPR, CSR License No. 9830.

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---oOo---

11:06:55 2005 --

11:06:56 A That's correct.

11:06:57 Q -- correct?

11:06:57 What was your personal net worth when you left Fisher Investments in July 2005?

11:07:08 A I don't recall specifically, but given the college student loans I still had, I was underwater.

11:07:19 Q And then you took a position at YouTube in August 2005; is that correct?

11:07:24 A That's correct.

11:07:24 Q And your title was director of finance and operations; is that correct?

11:07:31 A Yeah. Initially I didn't have a title --

11:07:33 Q I see.

11:07:34 A -- but --

11:07:34 Q But eventually it became --

11:07:36 A -- that's what it became, yeah.

11:07:37 Q Okay. And what's your present personal net worth?

11:07:42 A It's a few million.

11:07:47 Q A few million.

11:07:48 More than 5 million?

11:07:50 A Yes.

11:07:50 Q Okay. More than 10 million?

11:30:57 could explain why that would be?

11:30:59 A Well, as I said, I produced some of the slides to compose the board reports. It was a collaboration effort, and once I e-mailed the board reports, there were no -- the slides for the board reports , they were really of no use to me. We were on to the next month, and so if I made -- I would delete them. I don't know. It's possible.

11:31:33 Q Okay. Now, there was a period of time prior to the acquisition when you were the person responsible for finances at YouTube; correct?

11:31:46 A That's right.

11:31:46 Q And I take it that as part of your duties, you prepared financial projections; is that correct?

11:31:56 A That's correct.

11:31:56 Q And did you prepare those on your office laptop?

11:32:03 A Uh-huh.

11:32:04 Q And where did you store those?

11:32:08 A Just on the --

11:32:09 MR. INGBER: Objection; assumes facts not in evidence.

11:32:12

11:32:13 THE WITNESS: Huh?

11:32:13 MR. INGBER: Go ahead. You can answer.

11:32:15 MR. VERRILLI: Q. Where did you store those?

11:32:16 A On the laptop.

11:32:17 Q On the laptop?

11:32:18 A Uh-huh.

11:32:18 Q Okay. Anywhere else?

11:32:21 A They were sent through e-mail, but they weren't stored. We didn't have a server, a company server.

11:32:28 Q And financial projections, I take it, then were not developed on the Wiki?

11:32:37 A No.

11:32:37 Q Okay. So is it possible then that you deleted financial projections that you had prepared on your office laptop?

11:32:51 MR. INGBER: At any time?

11:32:54 MR. VERRILLI: Yeah.

11:32:54 Q At any time while -- prior to the acquisition.

11:32:59 A It's possible, but it's more likely that the model evolved over time as the company grew, so it wasn't that the first version was thrown out and let's start with a new one. It was just that you just refine as you get more data.

11:33:15 Q Did you keep hard copies of your financial

11:33:17 projections?

11:33:19 A There were excerpts that were included in some of the board reports, but a spreadsheet is much easier to use than a printout.

11:33:30 Q Right.

11:33:31 And I'm just trying to understand. You didn't save the spreadsheets over time that you did?

11:33:38 A Of course I saved them.

11:33:42 Q Okay. And you saved them on your office laptop?

11:33:45 MR. INGBER: Again, are we talking about pre-acquisition?

11:33:47 MR. VERRILLI: Yes, just pre -- I'm sorry. Pre-acquisition, yes.

11:33:51 THE WITNESS: I'm sorry. As far as saving, do you mean the actual model that's being refined over time, or snapshots of the model?

11:34:00 MR. VERRILLI: The snapshots of the model.

11:34:03 THE WITNESS: No, not necessarily.

11:34:05 MR. VERRILLI: Q. So you would erase the financial projections that you made --

11:34:10 A No.

11:34:10 Q -- in January once you got to February or March; is that what you're saying?

11:34:15 A No, we would refine.

11:34:17 MR. INGBER: Objection; misstates the witness's testimony.

11:34:19 THE WITNESS: We wouldn't erase. We would refine. Again, as you get more data, we would add that to the model.

11:34:25 MR. VERRILLI: Q. I just want to get clarity, Mr. Hurley. You did not maintain a historical projection of what your projections were at various points in time?

11:34:34 A No, because the projections are refined over time as you get data.

11:34:39 Q Sure.

11:34:40 But it wasn't relevant to you to know in June how accurate your predictions in January had been?

11:34:49 A Not necessarily.

11:34:51 Q So you just erased them?

11:34:52 MR. INGBER: Objection; asked and answered.

11:34:54 THE WITNESS: We didn't erase. We refined as we got more data.

11:34:58 MR. INGBER: Mischaracterizes the witness's testimony.

11:35:00 THE WITNESS: We got better projections.

11:35:02 MR. VERRILLI: Right.

11:35:02 Q And so you overwrote the old data?

11:35:04 MR. INGBER: Objection; asked and answered;

11:35:06 mischaracterizes the witness's testimony.

11:35:08 Go ahead.

11:35:09 THE WITNESS: Yeah. Again, we just refined

11:35:11 them and then tried to improve them.

11:35:12 MR. VERRILLI: Q. Well, would refining them,

11:35:16 as you are using that word, include overriding the

11:35:20 hold data in the spreadsheet?

11:35:26 A It's possible that -- well, of course when

11:35:29 you get more information, if you learn that one thing

11:35:32 is -- is wrong, and it's not accurate, then you remove

11:35:35 that from the model, and you add the new, better

11:35:38 information to give you a better forecast.

11:35:41 Q And you wouldn't save anywhere in any form

11:35:44 the old information?

11:35:48 MR. INGBER: Objection; asked and answered.

11:35:50 THE WITNESS: Yeah. You refine the model.

11:35:53 You get the better model. You don't keep the old

11:35:56 model around.

11:35:56 MR. VERRILLI: Q. When you created these

11:35:58 financial projections, did you make any backup copies?

11:36:03 MR. INGBER: Objection; vague.

11:36:04 THE WITNESS: Again, I saved it to my local

11:36:12 machine.

11:36:13 MR. VERRILLI: Q. And were you working in

11:36:15 Microsoft Excel?

11:36:17 A Yeah.

11:36:18 Q And how frequently did you do financial

11:36:21 projections?

11:36:27 A I mean --

11:36:28 MR. INGBER: Again, just focusing

11:36:29 pre-acquisition?

11:36:29 MR. VERRILLI: Yes.

11:36:31 THE WITNESS: Okay. It was one of my many

11:36:35 duties. It depends what time, what time period. Over

11:36:42 time, I focused more and more on finance and

11:36:45 operations.

11:36:46 MR. VERRILLI: Q. Well --

11:36:47 A Again, it was -- over time, the model also

11:36:50 got better, so it was just continual refinements.

11:36:55 Q And starting in January 2006 through the

11:37:04 period of the acquisition by Google --

11:37:06 A Yes.

11:37:06 Q -- did you do financial projections on --

11:37:08 more frequently than once a month?

11:37:15 A Certainly once a month to -- for the board

11:37:18 reports and also to measure the -- the data that we

11:37:21 got from the previous month to include that in the
11:37:24 model.
11:37:24 Q So at least once a month?
11:37:32 A Yes.
11:37:32 Q You did them for the board reports?
11:37:35 A Yes.
11:37:35 Q And then I take it you did them also for
11:37:39 other reasons in addition to the board reports?
11:37:43 MR. INGBER: Objection; assumes facts not in
11:37:45 evidence.
11:37:45 THE WITNESS: We did it for the company to --
11:37:52 I mean, to project where the -- how the site was
11:37:58 growing --
11:37:58 MR. VERRILLI: Q. And --
11:37:59 A -- what the company was up to.
11:38:00 Q -- and you maintained no historical record of
11:38:03 your projections from month to month? That's what
11:38:06 you're testifying to?
11:38:07 MR. INGBER: Objection to form; asked and
11:38:09 answered several times.
11:38:10 THE WITNESS: Yeah. Again, the model was
11:38:14 refined, and each month we would measure the stocks,
11:38:23 and then insert those as fact, and then the
11:38:26 forward-looking projection we would refine over time.

11:38:28 So the historic data was captured in that
11:38:31 model. It was just that the model would continue to
11:38:34 shape and evolve over time.
11:38:35 MR. VERRILLI: Okay.
11:38:40 Q Mr. Hurley, can you explain to me how one
11:38:45 would go about uploading a video clip onto YouTube?
11:38:51 A Sure. Just --
11:38:52 MR. INGBER: Objection; vague as to time.
11:38:56 MR. VERRILLI: Well, let's -- okay. Let's
11:38:58 make the time frame from the period between
11:39:02 January 1st, 2006, and the time of the acquisition.
11:39:05 During that time frame, can you explain to me
11:39:08 how one would go about uploading a video clip onto
11:39:12 YouTube?
11:39:12 A Sure. I can give you the general work flow.
11:39:16 You create an account on YouTube. You verify
11:39:22 your e-mail address for that account. You go to our
11:39:26 upload screen, click the upload button, select the
11:39:32 video file you want to upload, include the metadata
11:39:39 fields that we ask for, a description, title, tags,
11:39:44 category, and then hit upload.
11:39:48 Q And that's all it takes to upload?
11:39:51 A Generally, yeah, pretty much.
11:39:52 Q And did you ever upload videos to YouTube

12:13:29 plan for a start-up is hardly planned, because things
12:13:33 change so quickly. It's more reactive.
12:13:35 MR. VERRILLI: Q. Well, you had a business
12:13:38 model at least that you were pursuing; right?
12:13:41 A Again, the models at that time were so -- it
12:13:47 was just, again, best guesses and they were just
12:13:50 guesses.
12:13:52 Q Well, you -- one possibility was to pursue an
12:14:02 advertising based business model; correct?
12:14:04 A Yes.
12:14:04 Q Do you have any others?
12:14:12 A That was the primary. I don't recall any
12:14:15 other specific plans.
12:14:16 Q So the only one you can recall is an
12:14:20 advertising based business model?
12:14:22 A Well, first and foremost we were focused on
12:14:25 creating a great user experience, so it's very
12:14:29 secondary. That may sound odd creating a business and
12:14:34 not worrying about first and foremost money, but that
12:14:39 was the case. I mean, we were really trying to build
12:14:43 a great experience for the user.
12:14:44 Q And you didn't care about the money?
12:14:47 A Not in -- initially, no.
12:14:49 Q When did you start caring about the money?

12:14:51 MR. INGBER: Objection to form.

12:14:52 THE WITNESS: Well, it could be viewed that we -- we are now just starting to focus on money. 12:14:58 Even after the acquisition, Google allowed us to continue to focus on the user and to create a great 12:15:03 user experience.

12:15:07 MR. VERRILLI: Q. Well, your brother was focused on the money in that e-mail on August 17th, 12:15:10 2005; wasn't he?

12:15:12 A No; he was focused on a successful company.

12:15:16 Q "A multi-billion dollar success" is what it said; right? 12:15:17

12:15:19 MR. INGBER: Objection; asked and answered, Don. 12:15:23

12:15:23 THE WITNESS: Creating a great product that leads to success. 12:15:25

12:15:26 MR. VERRILLI: Q. And as far as you know, in 2005, no one employed at YouTube was thinking about getting acquired? 12:15:28 12:15:29 12:15:40 12:15:45

12:15:46 A In -- at what time period?

12:15:48 Q In 2005.

12:15:50 A No.

12:15:54 Q So it would surprise you to learn --

12:15:56 A Not to my knowledge.

12:15:56 Q -- so it would surprise you to learn that
12:15:58 your brother was actually communicating with other
12:16:00 YouTube employees in 2005 about getting acquired?
12:16:03 MR. INGBER: Objection to form.
12:16:05 He testified that the answer was no, not to
12:16:08 his knowledge.
12:16:08 MR. VERRILLI: So I asked him whether he'd be
12:16:11 surprised if that were the case.
12:16:14 THE WITNESS: Again, we had a -- a similar
12:16:17 vision of focusing on the users and creating a great
12:16:20 product. Anything like that, the money, any kind of
12:16:26 acquisition was very secondary and not at the
12:16:32 forefront of our thinking.
12:16:32 MR. VERRILLI: Okay.
12:16:35 Q Well, this -- we're talking about the
12:16:41 advertising based business model.
12:16:44 A Uh-huh.
12:16:44 Q Describe to me what an advertising based
12:16:47 business model is as you understand it.
12:16:52 A As I understand it, similar websites, you get
12:17:00 traffic, people come to you, the site, and then you
12:17:03 can insert ads onto those pages and -- and earn
12:17:07 revenue from those ads.
12:17:09 Q So one goal of an advertising based business

12:17:13 model is to build up a large community of users of the
12:17:18 website; right?
12:17:23 A Yeah.
12:17:24 Q Okay. And another goal in an advertising
12:17:29 based business model is to entice advertisers to place
12:17:36 ads on the website in order to earn revenue; right?
12:17:44 A That's one way. It's not necessarily the
12:17:47 way, and that's not the way we initially had it.
12:17:49 Q Okay. What -- how did you initially have it?
12:17:52 A Just with the various ad networks online that
12:17:56 you can employ. It's not that you have a direct sales
12:17:59 force selling ads for your site. They just auto
12:18:02 insert those ads.
12:18:03 Q But you did have a sales force selling ads
12:18:06 for your site by the second quarter of 2006; correct?
12:18:09 A That's right.
12:18:09 Q And you had planned well before the second
12:18:12 quarter of 2006 to have a sales force selling ads
12:18:16 directly by the second quarter of 2006; correct?
12:18:19 MR. INGBER: Objection to form; vague and
12:18:20 ambiguous.
12:18:22 What do you mean by "well before"?
12:18:25 THE WITNESS: Yeah, I don't recall
12:18:26 specifically when we planned that, to add a sales

12:18:33 force.

12:18:34 MR. VERRILLI: Q. You don't recall?

12:18:36 A No. Initially it was a -- it -- it would -- it would be easier for us if we didn't have a sales force, if we could just use the ad networks that would automatically do things on their own.

12:18:53 Q So going back to Exhibit 1, your resume, one thing that it says is that you prepared and delivered due diligence for the following transactions, and one of them is Series A and B financing; do you see that there?

12:19:07 A Uh-huh.

12:19:07 Q That was with Sequoia; correct?

12:19:10 A That's right.

12:19:10 Q And then it says "Equipment loan and lease"; do you see that?

12:19:14 A That's right.

12:19:14 Q That was with Triple Point; correct?

12:19:16 A That's right.

12:19:16 Q You don't recall making representations to Triple Point that you had plans to have a direct advertising sales force in the field in advance of the second quarter of 2006?

12:19:28 A I don't remember specifically. Again, I

12:29:31 reviewing the videos before they were uploaded?

12:29:34 A Not before. They would immediately go live to the site, and that was actually one of the reasons that we introduced the community flagging, is that they may upload -- I would go to bed at night. I was the only guy doing this. Somebody may upload a video in the middle of the night that was inappropriate, and then in the morning this video may show up on one of the most viewed pages, but there wasn't an easy way to -- I would have to work through all the way back until the middle of the night to be able to find that and take that video down.

12:30:12 So the community flagging was an ability for people to flag it and that it would automatically go into a queue.

12:30:21 Q But you -- you were reviewing -- I just want to get the facts clear. Until the end of November 2005 you were reviewing every video that was unloaded onto the site?

12:30:35 A Well, it depends. Reviewing, I would look at thumbnails of videos. I wasn't actually watching videos. It was -- it would be impossible to do that.

12:30:44 Q Did you review a thumbnail of every video that was uploaded to the site?

12:30:52 A Yeah, I would do my best. I was the only one doing it.

12:30:55 Q It must have been an -- must have been a real job, but -- but I just want to get clear.

12:31:02 That's what you were attempting to do, was to review a thumbnail of every video uploaded to the site?

12:31:07 A It was very ad hoc. Again, just looking at thumbnails, and if I saw some bare flesh, then I would remove it, but outside of sort of spotting porn, trying to catch other kind of inappropriate videos was very difficult to do. They would go through if they were, you know, violence videos, stuff like that.

12:31:31 You can't see that with just a thumbnail, so it would go live. Again, that's why we started building these tools so that the community could help police it.

12:31:40 So we looked to other sites, similar to online sites, like Craigslist and sort of these open forums and what they had done is sort of best practices to -- to rely on the community to be able to help keep -- keep the community itself safe.

12:31:58 Q Did you look at Google Video's practices as a model?

12:47:21 Q You've just been handed a document,
12:47:24 Mr. Hurley. It's been marked Exhibit 7.
12:47:27 Could you take a look at it, please.
12:47:29 A Uh-huh. Okay.
12:48:06 Q This is an e-mail from you; is that correct?
12:48:14 A That's correct.
12:48:14 Q And it was sent on the 24th of November 2005;
12:48:20 correct?
12:48:21 A Yes.
12:48:21 Q And --
12:48:23 MR. INGBER: Just for the record, there's
12:48:24 actually two e-mails in this chain.
12:48:26 MR. VERRILLI: Thank you. The e-mail at the
12:48:28 top half of the page is the one we're referring to.
12:48:31 Q You understand that, Mr. Hurley; right?
12:48:34 A Yes.
12:48:34 Q And the -- the -- the e-mail was sent on the
12:48:40 24th of November; correct?
12:48:42 A Yeah.
12:48:43 Q That was the day before the Thanksgiving
12:48:45 holiday; right?
12:48:46 A Yes, yeah.
12:48:47 Q Right.
12:48:49 And you are sending a message here to other

12:48:57 YouTube employees who are going to help you review
12:49:01 videos over the holiday weekend; correct?
12:49:03 A That's correct.
12:49:03 Q Okay. And you're giving them instructions
12:49:06 about what to do; correct?
12:49:08 A Yes.
12:49:08 Q Okay. And one of the instructions you give
12:49:16 them says "As far as copyright stuff is concerned, be
12:49:20 on the lookout for Family Guy, South Park and
12:49:25 full-length anime episodes."
12:49:29 Do I have that pronunciation correct by the
12:49:31 way?
12:49:31 A Sure. I don't know. Anime.
12:49:36 Q But that's one of the instructions you gave
12:49:38 to the reviewers; right?
12:49:42 A Yes.
12:49:42 Q And so when a reviewer found a Family Guy
12:49:49 episode, what was the reviewer supposed to do?
12:49:53 A I assume try to take it down.
12:49:58 Q And when the reviewer found a South Park
12:50:01 episode, what was the reviewer supposed to do?
12:50:04 A Try to take it down.
12:50:05 Q And when the reviewer found a full-length
12:50:09 anime episode, what was the reviewer supposed to do?

12:50:13 A Try to take it down.

12:50:14 Q Okay. But it was -- but the instruction goes on to say that "music videos and news programs are fine to approve"; right?

12:50:25 A Uh-huh.

12:50:25 MR. INGBER: Give an audible response.

12:50:27 THE WITNESS: Yes.

12:50:32 MR. VERRILLI: Q. Can I ask you to go back and look at Exhibit 2, please. Let me know when you're ready.

12:50:52 A Okay.

12:51:00 Q Are you ready?

12:51:01 A Yeah, I'm ready.

12:51:02 Q Okay. So this is an e-mail that you sent approximately a month and a half earlier; correct?

12:51:07 A That's correct.

12:51:08 Q Okay. And the subject is "Admin Improvements"; correct?

12:51:14 A That's right.

12:51:14 Q What does "Admin" mean?

12:51:18 A That was the review where the queue of videos when we would look at the thumbnails would be.

12:51:27 Q Okay. Can you go down to this number four here? You see it --

14:36:26 you were involved in the review process, you never
14:36:29 relied exclusively on the community flagging to
14:36:32 prevent pornography from appearing on the site;
14:36:37 correct?
14:36:38 MR. INGBER: Objection to form.
14:36:39 THE WITNESS: I think as I had said before,
14:36:41 we didn't have community flagging at the outset, so of
14:36:46 course we were just trying, ad hoc, trying to control
14:36:51 the site.
14:36:52 MR. VERRILLI: Q. But you continued when --
14:36:57 during the time when you were involved in review,
14:37:00 YouTube continued to review proactively for
14:37:04 pornography even after you had the community flagging
14:37:07 system in place; correct?
14:37:12 A Not to my knowledge.
14:37:16 Is this after I stopped doing any kind of
14:37:18 reviews?
14:37:19 Q When you were doing it.
14:37:20 A When I was doing it?
14:37:22 Q When you were doing it.
14:37:27 A Not to my knowledge. I know we stopped
14:37:30 reviewing all videos, and we had introduced a flag and
14:37:36 reviewed the flag videos.
14:37:38 Q And did YouTube ever implement the flagging

15:17:58 MR. INGBER: Hold on. I don't want you to
15:18:00 guess.
15:18:00 THE WITNESS: Oh, sorry. Yeah. Yeah, I'm
15:18:04 not sure. It may or might -- may not actually be part
15:18:08 of private videos.
15:18:10 MR. VERRILLI: Q. The fact is that YouTube
15:18:15 proactively reviewed every private video uploaded to
15:18:18 make sure there was no inappropriate content; correct?
15:18:20 MR. INGBER: Objection; vague as to time.
15:18:24 THE WITNESS: Initially we reviewed any
15:18:26 video.
15:18:26 MR. VERRILLI: Q. And after YouTube stopped
15:18:28 reviewing any video, it continued to review all
15:18:31 private videos uploaded to ensure there was no
15:18:34 inappropriate content; correct?
15:18:39 A Again, I'm not sure as far as timing. I
15:18:43 transitioned those duties over to Heather and the
15:18:46 other team members.
15:18:49 Q But you created a document that specifically
15:18:51 says that all private videos will be screened for
15:18:54 inappropriate content; didn't you?
15:18:56 MR. INGBER: Objection.
15:18:57 Show him the document if you feel it will
15:19:02 refresh his recollection.

15:34:05 I'm not -- I'm not surprised. It's just that I don't
15:34:11 specifically remember doing it.
15:34:12 MR. VERRILLI: Q. You don't have any reason
15:34:13 to think that this is incorrect; do you?
15:34:16 A No.
15:34:20 Q Okay. Could we give the witness Exhibit 14,
15:34:24 please.
15:34:39 Here you go. 14.
15:34:42 MR. INGBER: Is this the document with the
15:34:43 subject line "Board Preso"?
15:34:49 MR. VERRILLI: No, I'm sorry. I got ahead of
15:34:51 myself.
15:34:51 MR. INGBER: I think we're going on to 14 and
15:34:53 heading to 17 if you're marking a new 16?
15:34:57 MR. VERRILLI: No, I think I jumped ahead,
15:35:00 because I premarked this. That's what I think is
15:35:03 causing the confusion here. I think we are at 15.
15:35:05 MR. INGBER: Yeah, you're right.
15:35:06 MR. VERRILLI: And this document is 14. It's
15:35:08 a document, the tag line says "June Results." Okay.
15:35:12 It's my -- I'm the source of that confusion.
15:35:22 MR. INGBER: This is 14.
15:35:44 Don, which -- what's the Bates number on the
15:35:46 document that you've labeled Exhibit 13?

15:35:49 MR. VERRILLI: Exhibit 13?

15:35:50 MR. INGBER: Yes.

15:35:51 MR. VERRILLI: Exhibit 13 is the "Board Preso."

15:35:55

15:35:56 MR. INGBER: Okay.

15:35:56 MR. VERRILLI: It's 00762173.

15:36:03 MR. INGBER: Okay. Got it.

15:36:05 MR. VERRILLI: Okay.

15:36:06 Q Mr. Hurley, have you had a chance to review this document?

15:36:08

15:36:09 A Yes.

15:36:09 Q And the first page of this document is an e-mail, and it's from you to another person at YouTube; correct?

15:36:13

15:36:17

15:36:18 A Uh-huh, that's right.

15:36:19 Q And it's dated June -- forgive me, and it's dated August 18th, 2006; correct?

15:36:23

15:36:29 A August 18th, yeah.

15:36:30 Q Okay. And it attaches -- it has an attachment; correct?

15:36:35

15:36:36 A That's correct.

15:36:36 Q And did you prepare this attachment?

15:36:39 A Yes.

15:36:39 Q Okay. And you're familiar with it?

15:36:42 A Yes.

15:36:42 Q Okay. I just want you to explain some things to me about this document, and I'm going to ask if we could start on Bates numbered page 0073364.

15:37:09 A Okay.

15:37:10 Q There is a column to the left that says "date"; right?

15:37:13 A Yeah.

15:37:14 Q Is that the date on which the particular advertisement ran?

15:37:17 A Yes.

15:37:17 Q Okay. And the next column says "Channel"; right?

15:37:22 A Yeah.

15:37:22 Q What does that mean?

15:37:24 A Just the ad unit on the site depending on which page it was on.

15:37:33 Q Okay. So let me just ask some questions so I can get clarification as to what this means.

15:37:37 For example, on 6/1/2006 it says "Channel Watch Top." Does that mean the advertisement appeared at the top of the watch page?

15:37:48 A Yes.

15:37:48 Q Okay. And the next one, 6/1/2006, says

15:37:52 "Results Top." Does that mean that the advertisement
15:37:55 appeared at the top of the results page?
15:37:57 A The top of the search results page, I
15:37:59 believe.
15:37:59 Q Okay. I'm just trying to understand what --
15:38:02 what you meant by the words you used here.
15:38:04 A Uh-huh.
15:38:04 Q That's what it means --
15:38:06 A Yeah.
15:38:06 Q -- search results page?
15:38:08 Okay. And below it, I'm not going to go
15:38:12 through each one. I just want to gain a general
15:38:15 understanding of what these terms mean.
15:38:17 "6/1/2006 Results Right." That means that
15:38:20 the ad appeared on the right-hand side of the search
15:38:24 results page --
15:38:25 A True.
15:38:26 Q -- is that correct?
15:38:26 A Yeah.
15:38:27 Q Okay. And on the next one, it says "Browse
15:38:31 Right"; what does that mean?
15:38:35 A Those are the browse pages of most viewed or
15:38:38 most discussed videos.
15:38:39 Q Okay. And then "Channels Top," what does

15:38:46 that mean?

15:38:48 A I believe that's your own YouTube channel

15:38:51 when you create your account. That's sort of like

15:38:55 similar to your profile on other sites.

15:38:57 Q Okay. How about "Members Top"? What does

15:39:00 that mean?

15:39:01 A I'm not sure what that means.

15:39:07 Q How about "Groups Top"?

15:39:09 A I assume that's just the top of the groups

15:39:13 browse page.

15:39:13 Q How about "Tribal Top"?

15:39:16 A I'm not sure. We did have an ad network

15:39:22 called Tribal Fusion. I don't know why they had a

15:39:25 separate unit there, what that means.

15:39:27 Q And the -- without going through this

15:39:32 document line by line, this is a summary of the

15:39:37 advertisements that ran on YouTube in June 2006; is

15:39:44 that correct?

15:39:44 A Yeah.

15:39:44 Q And the data on the right-hand column is

15:39:48 basically measuring how well the advertisements did in

15:39:50 terms of what revenue they generated, how much

15:39:53 attention they got, that sort of thing; right?

15:39:55 MR. INGBER: Objection; vague.

15:39:56 THE WITNESS: Yeah, it shows clicks and
15:39:58 earnings.
15:39:59 MR. VERRILLI: Okay.
15:40:00 Q And what this -- one of the things that this
15:40:03 document tells us is that in June 2006, YouTube was
15:40:07 running ads on the watch pages; right?
15:40:12 A Yes.
15:40:12 Q And that in June 2006, it was running ads on
15:40:16 the results pages; correct?
15:40:18 A Yes.
15:40:18 Q And in June 2006, it was running ads on the
15:40:22 browse pages; correct?
15:40:23 A Yes.
15:40:23 Q And in June 2006, it was running
15:40:27 advertisements on the channels pages; correct?
15:40:29 A Correct.
15:40:30 Q And in June 2006, it was running ads on the
15:40:33 members pages; correct?
15:40:36 A Yeah, whatever those members' names are, yes.
15:40:41 Q Okay. And so any of the pages listed in this
15:40:43 document, it is a page on which advertising ran on
15:40:49 YouTube in June 2006; correct?
15:40:53 A Yes.
15:40:53 Q Okay. And I don't know if I asked you about

15:40:56 this one. I'm sorry.

15:40:57 "6/1/2006 Home Right," what does that mean?

15:41:03 A I assume it's the home page.

15:41:05 Q Okay. So the right-hand side of the home

15:41:08 page, is that what that would mean?

15:41:11 A Yeah, I can't be sure.

15:41:15 Q Well, you wrote the document; didn't you?

15:41:18 A This is a dump that Alex would dump out of, I

15:41:22 believe, double click. So this is a spreadsheet that

15:41:26 he created. I created the -- the -- the top

15:41:31 spreadsheet.

15:41:35 Q Okay. Let me mark this as exhibit....

15:42:02 (Document marked Hurley Exhibit 16

15:42:03 for identification.)

15:42:27 MR. VERRILLI: Q. I'm just going to ask you

15:42:37 a question about the first page, but you should feel

15:42:39 free to take all the time you want to look at the

15:42:42 document.

15:43:42 A Okay.

15:43:43 Q Okay. Exhibit 16 is -- the first page of it

15:43:55 consists of an e-mail chain, and the first e-mail

15:44:01 listed is an e-mail from you to Sean Dempsey; right?

15:44:06 A That's right.

15:44:06 Q Who's Sean Dempsey?

15:44:09 A I believe he's on the corporate development team at Google.

15:44:15 Q Okay. Did you interact with him during the course of due diligence on the Google acquisition of YouTube?

15:44:21 A Very briefly. We may -- this may be one of like two e-mails we exchanged.

15:44:27 Q Okay. You were involved in that due diligence process though; correct?

15:44:33 A Yes.

15:44:33 Q Okay. And it's CCed to Storm Duncan; correct?

15:44:38 A Uh-huh.

15:44:38 Q And who's he?

15:44:40 A I don't recall who Storm is, but he looks like a banker from Credit Suisse.

15:44:47 Q Okay. And in this message to Sean Dempsey, you were answering some questions that he posed to you; correct?

15:44:56 A Yes.

15:44:56 Q And item number three in your answer says "Yes, we are running ROS ads on both the search, watch and browse pages." That's what it says; right?

15:45:06 A That's what it says.

32876d86-00bd-4e7d-a439-846354a6f951

15:45:07 Q What's "ROS" stand for?

15:45:10 A Just Run of Site.

15:45:12 Q What is a run-of-site ad?

15:45:17 A Jeez, I don't know the specific definition.

15:45:45 Yeah, I don't know the specific definition.

15:45:48 Q Did you know it at the time you wrote this

15:45:50 e-mail?

15:45:51 A Yeah, I guess if I was --

15:45:55 MR. INGBER: Don't guess.

15:45:56 THE WITNESS: Well, yeah, I don't recall.

15:46:04 MR. VERRILLI: Q. Well, whatever a

15:46:08 run-of-site ad is, you're confirming in this e-mail

15:46:11 that as of October 2006 those ads were running on the

15:46:15 search watch and browse pages; correct?

15:46:17 A That's what it says.

15:46:18 Q And it would be important for you to be

15:46:20 accurate in conveying this information to Google as

15:46:23 part of the due diligence for this deal; correct?

15:46:26 A Yes.

15:46:26 Q So it's safe to assume that this was an

15:46:30 accurate statement of what YouTube was, in fact, doing

15:46:32 in October 2006 with respect to run-of-site ads;

15:46:36 correct?

15:46:36 MR. INGBER: Objection to form.

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15:46:37 THE WITNESS: Yeah. Again, I don't recall
15:46:45 specifically, but that's what the e-mail says, so I
15:46:48 have no reason to believe it's false.
15:46:50 MR. VERRILLI: Q. Well, my question to you
15:46:52 is whether -- I believe my question to you is -- I
15:46:55 apologize if I'm confused here -- was whether it was
15:46:59 important to be accurate in conveying this information
15:47:04 on Exhibit 16 to Google in the course of this due
15:47:07 diligence process.
15:47:08 MR. INGBER: Asked and answered.
15:47:11 MR. VERRILLI: Q. And what was the answer?
15:47:12 A Yes.
15:47:23 MR. VERRILLI: Okay. Could we mark this
15:47:25 document, please, as, I guess, what, 17? Yes, 17.
15:47:35 (Document marked Hurley Exhibit 17
15:47:37 for identification.)
15:47:37 MR. VERRILLI: Q. We've only got a few
15:47:38 minutes left on the tape, so after we discuss this
15:47:41 document, why don't we take a break; okay?
15:47:43 A Sure.
15:50:04 Q You ready?
15:50:06 A Okay.
15:50:06 Q Okay. The cover page of Exhibit 17 is an
15:50:09 e-mail from Maryrose Dunton to Micah Schaffer and

15:50:15 Heather Gillette; correct?

15:50:17 A That's correct.

15:50:18 Q It's dated January 1st, 2006, -- January 10th, 2006; correct?

15:50:22

15:50:23 A Yes.

15:50:23 Q Okay. It has an attachment to it; correct?

15:50:28 A That's correct.

15:50:28 Q The attachment is titled "YouTube Feature Description"; correct?

15:50:33

15:50:34 A That's correct.

15:50:35 Q The feature name is "Admin Improvements"; correct?

15:50:38

15:50:38 A Correct.

15:50:38 Q The document lists three innovators; correct?

15:50:44 A Correct.

15:50:44 Q One of them is Brent; correct?

15:50:47 A Yes.

15:50:47 Q That's you; correct?

15:50:48 A Yes.

15:50:48 Q Okay. So you were one of the innovators of this admin improvements feature; correct?

15:50:51

15:50:54 A Yes, I worked on this feature.

15:50:56 Q Okay. Do you recall doing so?

15:50:59 A Yes. Well, I recur -- I recall working with

15:51:09 lawyer -- with lawyers on this feature.

15:51:11 MR. INGBER: Okay. Don't -- that's fine.

15:51:13 MR. VERRILLI: I didn't ask him anyway.

15:51:15 MR. INGBER: I understand. I want to caution

15:51:17 him not to reveal any attorney-client communications.

15:51:20 MR. VERRILLI: Okay.

15:51:21 Q The -- you know what, in light of that, I'm

15:51:24 thinking what I'd like to do is finish my questions on

15:51:29 this. I don't know if it's going to run over the

15:51:31 tape, but I would like to finish my questions on this

15:51:34 document, and then we can take a break; okay?

15:51:37 A Okay.

15:51:37 Q So what I'd like to first direct your

15:51:39 attention to with respect to this document,

15:51:44 Mr. Hurley, is the item number one on the page,

15:51:50 "Screening of Only Flagged/Private Videos"; you see

15:51:54 that there?

15:51:55 A Yeah.

15:51:55 Q This document indicates that moving forward

15:52:01 all private videos will be screened; correct?

15:52:05 MR. INGBER: Objection to form.

15:52:06 THE WITNESS: That's what the document says.

15:52:15 MR. VERRILLI: Q. And that was the policy

15:52:16 going forward as of the time this document was

15:52:18 created; right?

15:52:20 MR. INGBER: Objection to form.

15:52:21 THE WITNESS: Again, I didn't create this

15:52:25 document. I contributed to these features, but I

15:52:31 don't recall specifically. Again, I had moved on to

15:52:33 other things. This was sort of my last project that I

15:52:38 was working on until I like really transitioned over

15:52:42 to finance and operation duties. So I don't recall

15:52:49 the specific policy going forward or....

15:52:56 MR. VERRILLI: Q. It does indicate that all

15:53:00 private videos will be screened; right?

15:53:06 A It says "Moving forward, only flagged and

15:53:08 private videos will be reviewed."

15:53:10 Q And then the last of the bullets there under

15:53:13 point one indicates that all private videos will be

15:53:17 screened; right?

15:53:23 MR. INGBER: Objection to form. The document

15:53:25 speaks for itself.

15:53:29 THE WITNESS: Break out admin into three tabs

15:53:31 with videos filtered. Private videos is one of those.

15:53:36 MR. VERRILLI: Q. So does this mean that any

15:53:38 video that was uploaded as a private video would

15:53:43 automatically be routed to admin for review?

15:53:47 MR. INGBER: Objection; lacks foundation.

15:53:54 THE WITNESS: Again, I don't recall. I
15:53:56 wasn't involved with the daily admin tool at this
15:54:00 point.
15:54:00 MR. VERRILLI: Q. Well, is listing you as an
15:54:04 innovator another embellishment?
15:54:06 MR. INGBER: Objection; argumentative.
15:54:09 THE WITNESS: Again, I -- I contributed to
15:54:10 this, but I didn't actually implement it.
15:54:12 MR. VERRILLI: Q. Well, did you contribute
15:54:14 to the decision that all private videos would be
15:54:16 screened?
15:54:17 MR. INGBER: Objection.
15:54:17 And I'll allow you to answer only to the
15:54:22 extent you're not revealing privileged attorney-client
15:54:35 communications.
15:54:37 THE WITNESS: I don't recall specifically
15:54:38 what I added. I just know that I worked on this
15:54:42 project primarily with our lawyers, but as far as
15:54:51 specific things, and again, I wasn't an engineer, I'm
15:54:57 not really a product person, I just had been reviewing
15:54:59 the videos in the early days. So my input was helpful
15:55:05 to try to come up with these tools.
15:55:08 MR. VERRILLI: Q. And you don't have any
15:55:11 reason to doubt that all private videos were, in fact,

15:55:14 screened after this feature was implemented; do you?

15:55:16 MR. INGBER: Objection; lacks foundation.

15:55:18 You can answer.

15:55:19 THE WITNESS: Again, I don't recall specifically, but I don't have any reason to believe

15:55:24 that -- that it wasn't.

15:55:27 MR. VERRILLI: Q. Well, to your knowledge, were the other elements of the changes in practice

15:55:30 identified in this document actually implemented?

15:55:33 MR. INGBER: Objection to form.

15:55:44 THE WITNESS: I can't recall specifically. I know you have to confirm your e-mail address, so I

15:56:13 can -- I know that is a feature that's on the site now.

15:56:20 I don't ever recall having an e-mail alert for flagged at YouTube, so I can't recall, so I can't

15:56:23 really give specifics on all this stuff. Again, because I wasn't directly --

15:56:25 MR. VERRILLI: Q. And --

15:56:27 THE WITNESS: -- involved in the day-to-day.

15:56:30 MR. VERRILLI: Q. Sorry. I didn't mean to interrupt you.

15:56:38 Under "Scope," the first item is "Screening of Only Flagged/Private Video"; do you see that?

15:56:41

15:56:41

15:56:44

15:56:45

15:56:47

15:56:47

15:56:50

15:56:54 A I see that.

15:56:55 Q Okay. So is one of the changes that this feature described in this exhibit bringing about is an end to the review on a proactive basis of all of the -- of thumbnails of all of the videos that are being uploaded to YouTube?

15:57:21 MR. INGBER: Objection to form.

15:57:24 THE WITNESS: It's -- I don't recall the specific timetable, but I believe we stopped reviewing all videos earlier around that Thanksgiving time period because it was -- it was impossible to do, so that's why we were creating these tools.

15:58:01 MR. VERRILLI: Q. Well, was the decision to stop reviewing all videos based on the advice that your lawyers gave you?

15:58:18 MR. INGBER: Objection; that question in itself may call for the disclosure of privileged attorney-client communications. So I'm going to instruct the witness not to answer.

15:58:30 MR. VERRILLI: Okay. I'm not trying to be difficult about this. We have an issue about advice of counsel.

15:58:35 MR. INGBER: I understand.

15:58:35 MR. VERRILLI: I'm going to make a record,

15:58:38 okay, and you can instruct the witness not to answer,
15:58:40 and it will be fine.
15:58:41 Q So what I'm trying to get at here,
15:58:43 Mr. Hurley, is whether you relied on the advice of
15:58:47 counsel in shaping the policies set forth in this
15:58:51 document?
15:58:52 MR. INGBER: Is that a question?
15:58:55 MR. VERRILLI: Yes.
15:58:55 MR. INGBER: Okay. I instruct you not to
15:58:58 answer to the extent that it will reveal privileged
15:59:01 attorney-client communications.
15:59:09 Actually, strike that. I instruct you not to
15:59:12 answer the question on the ground that it will reveal
15:59:14 attorney-client communications.
15:59:16 MR. VERRILLI: Okay.
15:59:20 Q Tell me the names of the attorneys with whom
15:59:23 you were conferring during the process that led up to
15:59:27 these policy changes?
15:59:30 A Brian Knapp and Kathy Kirkman.
15:59:34 Q And were they lawyers at the Wilson, Sonsini
15:59:37 firm?
15:59:37 A Yes.
15:59:37 Q Okay. Anyone else?
15:59:40 A Not that I recall.

15:59:42 Q Did YouTube have an in-house lawyer at this
15:59:44 time?
15:59:47 A I'm not sure.
15:59:54 THE VIDEOGRAPHER: We're really getting low
15:59:55 on tape now.
15:59:58 MR. VERRILLI: Okay. Let's take our break
16:00:00 now.
16:00:00 THE VIDEOGRAPHER: This is the end of
16:00:01 videotape number two in the deposition of Brent Hurley
16:00:04 on August 26th, 2008.
16:00:07 The time is 3:59 p.m. -- :54 p.m.
16:00:12 We're off the record.
16:00:13 (Recess taken.)
16:23:51 THE VIDEOGRAPHER: This is the beginning of
16:23:53 videotape number three in the deposition of
16:23:57 Brent Hurley on August 26th, 2008. The time is
16:24:00 4:23 p.m.
16:24:01 We are back on the record.
16:24:04 MR. VERRILLI: Q. Mr. Hurley, before the
16:24:06 break, we were talking about Exhibit 17. Could you
16:24:11 take another look at that?
16:24:12 A Sure.
16:24:12 Q This was the YouTube feature description.
16:24:21 A Yes.

16:57:33 please. So just to remind you, Exhibit 3 is an e-mail
16:57:59 from you to Jawed Karim dated November 22nd, 2005,
16:58:05 correct?
16:58:05 A Correct.
16:58:05 Q You're responding to an e-mail that Mr. Karim
16:58:09 sent to you on November 22nd asking you why YouTube
16:58:14 got rid of the copyright flagging; correct?
16:58:16 A Yes.
16:58:16 Q Now, it's true, isn't it, that YouTube for a
16:58:19 time had a copyright flagging feature; correct?
16:58:22 A Yes.
16:58:22 Q Okay. Explain to me how that feature worked
16:58:25 when it was in operation?
16:58:31 A As you see in this e-mail, it shows there are
16:58:35 a number of things you could flag a video for on being
16:58:40 feature this to promote, try to get your video on the
16:58:46 front page inappropriate, miscategorized and
16:58:51 copyright.
16:58:54 Q So explain to me, please, how the feature
16:58:58 worked.
16:58:58 A Although there are these different buckets,
16:59:01 they just were flagged and -- and put into the queue.
16:59:05 Q So while this feature was operative, if a
16:59:09 YouTube user flagged a video for copyright, then it

16:59:13 would go into the queue; correct?

16:59:16 A Yeah.

16:59:17 Q And it would be reviewed to determine whether

16:59:19 it was likely to be an unauthorized upload of

16:59:22 copyrighted work; correct?

16:59:31 A Yeah, I think that was the thinking at the

16:59:37 time.

16:59:38 Q You used the word "yeah" when you started

16:59:42 that answer. You meant "yes"?

16:59:45 A Yes.

16:59:45 Q Okay. And then there came a point where

16:59:50 YouTube made a policy decision to remove the copyright

16:59:55 flagging feature; correct?

16:59:58 A Yes.

16:59:58 Q So when you had the feature, you were

17:00:04 reviewing videos, "you" meaning YouTube -- let me --

17:00:09 let me start over so we don't have any lack of

17:00:11 clarity.

17:00:11 When the feature was in place, YouTube was

17:00:14 reviewing videos to determine whether they were likely

17:00:18 to be unauthorized uploads of copyrighted works;

17:00:23 correct?

17:00:25 MR. INGBER: Hold on.

17:00:40 Objection to the form of the question to the

17:00:42 extent it mischaracterizes the witness's testimony.

17:00:44 MR. VERRILLI: You can answer the question.

17:00:48 THE WITNESS: Could you repeat the question,

17:00:49 please?

17:00:49 MR. VERRILLI: Could you read it back,

17:00:50 please.

17:01:10 (Whereupon, record read by the Reporter as

17:01:10 follows:

16:59:58 "Question: So when you had the feature, you

17:00:04 were reviewing videos, "you" meaning YouTube

17:00:08 -- let me -- let me start over so we don't

17:00:10 have any lack of clarity.

17:00:11 "When the feature was in place, YouTube was

17:00:14 reviewing videos to determine whether they

17:00:18 were likely to be unauthorized uploads of

17:00:22 copyrighted works; correct?")

17:01:12 THE WITNESS: So again, this e-mail was dated

17:01:25 November 22nd. I think the subsequent e-mail was like

17:01:30 two days later where we stopped reviewing all the

17:01:35 thumbnails of the videos being uploaded. At this

17:01:39 time, we had received notices from content owners

17:01:43 asking us to remove things from the site. So, you

17:01:48 know, we were trying to address the problem and create

17:01:51 different features to -- to again address this

17:01:55 problem. One of these was that this copyright flag
17:02:01 that we had but then quickly realized that it was
17:02:06 completely ineffective, there was -- people could flag
17:02:13 things that they, you know, weren't the copyright
17:02:15 owner. They might be upset with one of their friends
17:02:21 and flag a video.
17:02:23 There was just a whole host of things, and we
17:02:25 were in no position to know who -- if -- if the
17:02:32 content was -- was authorized and also whoever was
17:02:36 flagging the video, if they were authorized to make
17:02:39 the judgment call to have it removed or request to
17:02:42 have it removed.
17:02:44 MR. VERRILLI: Q. Well, the user who flagged
17:02:47 it didn't make a judgment call to remove it; correct?
17:02:49 MR. INGBER: Objection; calls for
17:02:51 speculation.
17:02:54 MR. VERRILLI: Q. Let me rephrase it.
17:02:55 A Yeah.
17:02:55 Q YouTube made the decision whether to remove
17:02:57 the flagged videos, not the user; correct?
17:03:01 A Remove this copyright flag?
17:03:03 Q Any flagged video. YouTube made the decision
17:03:06 to remove a flagged video, not the user; correct?
17:03:10 MR. INGBER: Objection; argumentative.

17:03:11 THE WITNESS: After a video is flagged, we
17:03:16 review it to, you know, use our best efforts to -- to
17:03:19 see if the video violates the terms of use, and then
17:03:23 yes, we remove it from the site.
17:03:25 MR. VERRILLI: Right.
17:03:25 Q The flagging by the user does not
17:03:27 automatically result in the removal?
17:03:29 A No.
17:03:30 Q The removal occurs when YouTube makes a
17:03:33 judgment that the video should be removed; correct?
17:03:37 A That is correct.
17:03:37 Q And for --
17:03:38 A And I'd just like to add that, you know,
17:03:41 things like porn are -- are easy to sort of see that
17:03:44 they violated the terms of use. You look at the
17:03:47 video, you know all the information you need is
17:03:49 contained in that video, so we can remove those in
17:03:56 confidence that they are, in fact, violations of the
17:03:58 Terms of Use.
17:04:01 Again, other pieces of content which may be
17:04:04 unauthorized, we have no way of knowing if, in fact,
17:04:09 the content owner did authorize and did see the site
17:04:13 with their videos.
17:04:15 One example that's pointed to a lot is the

17:30:45 THE WITNESS: Yeah. So my understanding of
17:30:47 an MD5 hash, it's a unique thumbprint of the video
17:30:52 file, but the exact video file needs to be uploaded to
17:30:55 produce a matching fingerprint.
17:30:58 So if -- if you took one clip and it was a --
17:31:04 a two-minute clip of this video and we got a notice,
17:31:09 or it was inappropriate and we took it down, if
17:31:13 another user tried to upload it but they had edited,
17:31:16 so it was only one of the two minutes, then it would
17:31:20 be a different thumbprint, so it wouldn't be able to
17:31:24 recognize that.
17:31:25 MR. VERRILLI: Right.
17:31:26 Q So it was ineffective unless the -- unless
17:31:30 the subsequent upload was exactly identical to the
17:31:34 clip that had been taken down; correct?
17:31:36 MR. INGBER: Objection to form.
17:31:41 THE WITNESS: It was the best solution at the
17:31:43 time. And again it was a -- a feature that we
17:31:46 introduced that, to my knowledge, no other video site
17:31:49 had introduced showing that we were actively trying to
17:31:55 address this, this issue.
17:31:57 MR. VERRILLI: Q. Well, if you had gotten an
17:31:59 MD5 hash of an entire episode of a television show,
17:32:04 then any clip that was uploaded that matched any part

17:32:10 of the television show would have been blocked;
17:32:13 wouldn't it?
17:32:14 THE WITNESS: No.
17:32:14 MR. INGBER: Objection to form.
17:32:15 THE WITNESS: That's exactly what I said
17:32:17 wouldn't happen. That's what I was outlining the
17:32:20 fundamental limitations of this MD5 hash, that it
17:32:24 needed to be the exact same video.
17:32:28 MR. VERRILLI: Q. So it didn't really block
17:32:30 very many uploads; did it?
17:32:35 MR. INGBER: Objection; vague.
17:32:36 THE WITNESS: Yeah, I -- I don't have that
17:32:38 information, but again, it was a best tool that we had
17:32:46 at the time. We were trying to rapidly come up
17:32:48 with -- with tools to address this.
17:32:50 MR. VERRILLI: Q. You think that was the
17:32:51 best available technology at the time, to prevent the
17:32:54 unauthorized upload of copyrighted works?
17:32:58 MR. INGBER: Objection to form.
17:33:02 THE WITNESS: To my knowledge.
17:33:02 MR. VERRILLI: Q. You never heard of Audible
17:33:06 Magic at that time?
17:33:09 A I can't recall.
17:33:11 Q Did you ever here of Audible Magic?

17:35:54 witness, we have to repeat our questions.

17:35:56 MR. INGBER: Okay.

17:35:57 MR. VERRILLI: I'm sorry for that, but that's

17:35:58 just the way it is.

17:35:59 MR. INGBER: Just because you're not getting

17:36:00 the answers you necessarily want, Don, doesn't make a

17:36:04 witness evasive.

17:36:05 MR. VERRILLI: Q. So let's continue to

17:36:07 discuss the Content Verification Program; okay?

17:36:14 A (Witness nods head.)

17:36:14 Q That program was designed to have two phases;

17:36:21 right?

17:36:27 A I don't -- I don't recall specifically. I

17:36:30 know we were adding new features just like we're

17:36:34 adding new features to the site. Just like rapidly

17:36:38 throughout the entire life of the company.

17:36:40 Q You designed the program; right?

17:36:43 A I -- yeah, I -- I had the lead working with

17:36:47 our lawyers and also other product people at the -- at

17:36:51 YouTube.

17:36:52 MR. VERRILLI: Okay. Can we mark this,

17:36:53 please, as an exhibit?

17:36:53 (Document marked Hurley Exhibit 20

17:37:10 for identification.)

17:37:10 MR. INGBER: Thank you.

17:37:11 MR. VERRILLI: Q. Let me know when you're ready, Mr. Hurley.

17:38:07 A Okay.

17:38:07 Q You ready?

17:38:08 A Yeah.

17:38:10 Q The first page of this document is an e-mail from you to Maryrose Dunton; correct?

17:38:18 A Correct.

17:38:18 Q And it's dated March 1st, 2006; correct?

17:38:22 A That's correct.

17:38:22 Q And it was forwarding an attachment; correct?

17:38:27 A That's correct.

17:38:28 Q And the attachment describes something called a "Content Mgmt System Program Spec"; right?

17:38:34 A That's correct.

17:38:35 Q And is this document describing the Content Verification Program?

17:38:45 A This was a spec sheet, so this was an outline of what we envisioned it might become, but it wasn't that the program actually, I believe, launched.

17:38:58 So it wasn't a -- it wasn't a rundown of what we had created. It was a -- this is what we, you know, would like to create.

17:39:07 Q Do you remember how long after you sent this
17:39:11 document to Ms. Dunton you actually launched the
17:39:14 program?
17:39:16 A I don't recall specifically. I believe that
17:39:21 it would be rolled out there. There are a number of
17:39:23 features listed here, so I don't think it's one day we
17:39:27 turned everything on. It was probably over a series
17:39:29 of pushes.
17:39:32 Q Well, when did you start pushing the features
17:39:37 out?
17:39:38 A This -- this is at a time where I was
17:39:42 transitioning again over to the finance and operation
17:39:47 roles. This was sort of my last project with the
17:39:51 reviewing of videos. So I worked on the spec sheet in
17:39:56 conjunction with -- with counsel, but then I sort of
17:40:02 dropped off, and -- and then the actual product people
17:40:06 and engineers then executed and actually created this,
17:40:11 but by that -- by that time I rolled off onto other
17:40:15 duties.
17:40:16 Q So you're not aware that you launched the
17:40:20 Content Verification Program approximately ten days
17:40:24 after this e-mail was sent?
17:40:25 A I don't recall.
17:40:29 Q This was a program that you were in charge

17:40:30 of?

17:40:31 A Again, it wasn't -- there's a distinction. I

17:40:34 helped brainstorm about these tools and -- and things

17:40:38 that we could do. Again, there -- there weren't any

17:40:41 other video sites that were employing these things, so

17:40:44 I was -- I was -- I was looking at other sites like

17:40:48 eBay. You can see the URLs that reference eBay's sort

17:40:53 of similar program that I was looking at.

17:40:56 But again, I wasn't the -- the "product

17:40:59 manager" for this. I had been transitioning over, so

17:41:04 this is -- these are the -- the brainstorming of these

17:41:08 tools that I interjected and passed over to folks like

17:41:13 Maryrose and then the other engineers to actually

17:41:14 implement.

17:41:15 Q Who -- who was the project manager?

17:41:17 A I believe it was Maryrose.

17:41:19 Q And do you know which engineers worked with

17:41:22 her?

17:41:22 A I don't recall, no.

17:41:25 Q Okay. So in Phase I of this plan that you

17:41:30 came up with, you notice the last bullet says "Ability

17:41:35 to save searches and have newly added video results

17:41:42 emailed to you on a user-defined frequency"; do you

17:41:44 see that?

17:41:45 A Yes.

17:41:45 Q Can you describe to me what that feature was intended to be?

17:41:48 MR. INGBER: Hold on a second. I just want to caution the witness that to the extent your testimony will reveal privileged attorney-client communications, don't answer, but otherwise you can go ahead and answer.

17:41:59 THE WITNESS: Again, this was a feature directed primarily at the content owners making it easier for them to monitor their content so it would -- they could define at their direction what -- what keywords that they would like to save as sort of a predefined search, and then could e-mail to them so they could just look at -- look at -- they could -- the vision was that they could define the searches, the frequency that they receive these e-mails so they could get them daily, weekly, monthly, but it would be, again, at their direction.

17:42:44 Q So I just want to get clarity on how this worked. I'm going to give you a hypothetical, and you tell me if this is accurate.

17:42:51 A Okay.

17:42:52 Q Okay.

17:42:52 So I'm a content owner, and I am using this
17:42:59 CVP tool to take down clips of The Daily Show.
17:43:06 A Okay.
17:43:06 Q And to -- as part of my effort in the search
17:43:11 that I have to undergo to find these clips on YouTube
17:43:14 and get them taken down, I use a keyword search, and I
17:43:20 search for the key words "Daily Show."
17:43:24 So does this feature then provide that
17:43:29 whenever a video is subsequently uploaded with the tag
17:43:35 that includes the words "Daily Show," I can get an
17:43:40 e-mail telling me that that's happened?
17:43:42 MR. INGBER: Objection to form.
17:43:43 You can answer it.
17:43:45 THE WITNESS: I believe that was the -- the
17:43:48 vision, but I don't believe this was ever a feature
17:43:54 that ever came to life.
17:43:55 MR. VERRILLI: Right.
17:43:56 Q Never happened; correct?
17:43:57 A Yeah.
17:43:57 Q Okay. Do you know why?
17:44:00 MR. INGBER: Again, don't answer if you're
17:44:04 going to reveal any communications with counsel.
17:44:06 THE WITNESS: Again, after submitting these
17:44:13 suggestions for -- for tools that we could create, I

17:44:17 dropped off of it, so I didn't actually implement the
17:44:20 program. So I couldn't say why some features were
17:44:26 adopted and others were not, because I wasn't actually
17:44:30 implementing the program myself.
17:44:33 MR. VERRILLI: Q. In your communication with
17:44:34 Maryrose Dunton about this program that we're
17:44:37 discussing, did she ever tell you that she hated the
17:44:40 e-mail feature that we've been discussing?
17:44:44 A I don't recall.
17:44:46 Q Were you aware that, in fact, she hated this
17:44:49 feature?
17:44:50 A I don't recall.
17:44:52 Q So it's possible she did tell you?
17:44:54 MR. INGBER: Objection; asked and answered.
17:44:57 THE WITNESS: No, I don't recall receiving.
17:45:03 MR. VERRILLI: Q. Were you aware that she
17:45:06 referred to the content owners who would benefit to
17:45:10 this e-mail fingers as "A-holes."
17:45:15 MR. INGBER: Objection.
17:45:15 THE WITNESS: No, I'm not aware of that. I
17:45:20 don't recall that.
17:45:20 MR. VERRILLI: Q. Were you aware that she
17:45:23 did not want to do anything to help the content owners
17:45:25 she referred to as "A-holes"?

17:45:25 MR. INGBER: Objection to form. I don't know
17:45:27 what you're talking about, but to the extent it
17:45:30 mischaracterizes a document or testimony --
17:45:35 MR. VERRILLI: You really don't want me to
17:45:36 pull out this document; do you? I mean, you know, you
17:45:40 had World War III last week about it.
17:45:44 MR. INGBER: I'm not going to tell you how to
17:45:46 conduct your deposition, but you're asking questions
17:45:50 and apparently referring to testimony or a document,
17:45:53 and so I'm just preserving my objection for the
17:45:55 record.
17:45:55 MR. VERRILLI: Fine.
17:45:56 Q And all I want to know is whether you were
17:45:57 aware of these things.
17:45:58 A I don't recall.
17:45:59 Q Were you aware she actively discouraged
17:46:02 rolling out this e-mail feature behind your back?
17:46:05 MR. INGBER: Objection to form.
17:46:06 THE WITNESS: No, I don't recall.
17:46:07 MR. VERRILLI: Q. Were you aware that
17:46:12 Matt Rizzo also actively opposed rolling out this
17:46:16 e-mail feature?
17:46:17 MR. INGBER: Objection.
17:46:17 THE WITNESS: No, I don't recall. Again, I

17:46:19 wasn't -- I wasn't implementing these suggestions.

17:46:24 MR. VERRILLI: Q. Were you aware that

17:46:25 Maryrose Dunton and Matt Rizzo agreed together to try

17:46:31 to delay the rollout of this e-mail feature?

17:46:34 MR. INGBER: Objection.

17:46:35 THE WITNESS: Again, I -- I don't know,

17:46:38 because I wasn't implementing these suggestions. I

17:46:42 don't know why some were implemented and others were

17:46:45 not.

17:46:45 MR. VERRILLI: Q. How many employees were

17:46:46 there at YouTube during this March 2006 time frame?

17:47:01 A I don't recall specifically, but if I had --

17:47:03 I would -- I would say probably around 30.

17:47:06 Q Okay. And Matt Rizzo was one of them?

17:47:10 A I can't recall specifically when he was

17:47:12 hired.

17:47:13 Q You know who he is?

17:47:14 A Yes.

17:47:15 Q And he's -- he was an employee of YouTube?

17:47:17 A Yes.

17:47:17 Q He still is an employee of YouTube?

17:47:20 A Yes.

17:47:20 Q He's an engineer?

17:47:22 A Yes.

17:47:22 Q Okay. Were you aware that he referred to the
17:47:26 content owners who would benefit from this e-mail
17:47:30 system as "assholes"?
17:47:33 MR. INGBER: Objection to form.
17:47:33 THE WITNESS: No, I'm not aware.
17:47:35 MR. VERRILLI: Q. Were you aware that
17:47:36 Maryrose Dunton and Matt Rizzo agreed to go to Chad
17:47:41 Hurley and tell him that YouTube should not implement
17:47:46 this e-mail feature?
17:47:48 MR. INGBER: Same objection to the extent
17:47:51 you're mischaracterizing documents in this case.
17:47:55 THE WITNESS: Yeah. Again, I can't recall.
17:47:58 I wasn't -- I wasn't part of those conversations, so I
17:48:02 don't --
17:48:02 MR. VERRILLI: Q. Well, did your brother
17:48:03 Chad ever come to you and ask you about this e-mail
17:48:07 notification system?
17:48:10 A I don't recall.
17:48:10 Q Okay. Now, in this -- back to the document.
17:48:17 There's Phase II here described.
17:48:20 A Uh-huh.
17:48:21 Q The first bullet point says "Voluntary
17:48:26 monitoring and removal by YouTube by potentially
17:48:30 infringing videos"; do you see that?